

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1824 be amended to read as follows:

1 Page 5, after line 27, begin a new paragraph and insert:

2 "SECTION 5. IC 8-1-2-42 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 42. (a) No
4 change shall be made in any schedule, including schedules of
5 joint rates, except upon thirty (30) days notice to the
6 commission, and approval by the commission, and all such
7 changes shall be plainly indicated upon existing schedules or by
8 filing new schedules in lieu thereof thirty (30) days prior to the
9 time the same are to take effect. The commission may prescribe
10 a shorter time within which a change may be made. **Except as**
11 **provided in section 42.1 of this chapter**, a public, municipally
12 owned, or cooperatively owned utility may not file a request for
13 a general increase in its basic rates and charges within fifteen
14 (15) months after the filing date of its most recent request for a
15 general increase in its basic rates and charges, except that the
16 commission may order a more timely increase if:

17 (1) the requested increase relates to a different type of
18 utility service;

19 (2) the commission finds that the utility's financial
20 integrity or service reliability is threatened; or

21 (3) the increase is based on:

22 (A) a rate structure previously approved by the
23 commission; or

24 (B) orders of federal courts or federal regulatory
25 agencies having jurisdiction over the utility.

26 The phrase "general increase in basic rates and charges" does
27 not include changes in rates related solely to the cost of fuel or

1 to the cost of purchased gas or purchased electricity or
2 adjustments in accordance with tracking provisions approved by
3 the commission.

4 (b) No schedule of rates, tolls, and charges of a public,
5 municipally owned, or cooperatively owned utility which
6 includes or authorizes any changes in charges based upon costs
7 is effective without the approval of the commission. Before the
8 commission approves any changes in the schedule of rates,
9 tolls, and charges of an electric utility, which generates and sells
10 electricity, based upon the cost of fuel to generate electricity or
11 upon the cost of fuel included in the cost of purchased
12 electricity, the utility consumer counselor shall examine the
13 books and records of the public, municipally owned, or
14 cooperatively owned generating utility to determine the cost of
15 fuel upon which the proposed charges are based. In addition,
16 before such a fuel cost charge becomes effective, the
17 commission shall hold a summary hearing on the sole issue of
18 the fuel charge. The utility consumer counselor shall conduct
19 ~~his~~ a review and make a report to the commission within twenty
20 (20) days after the utility's request for the fuel cost charge is
21 filed. The commission shall hold the summary hearing and
22 issue its order within twenty (20) days after it receives the
23 utility consumer counselor's report. The provisions of this
24 section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this
25 chapter concerning the filing, printing, and changing of rate
26 schedules and the time required for giving notice of hearing and
27 requiring publication of notice do not apply to such a fuel cost
28 charge or such a summary hearing.

29 (c) Regardless of the pendency of any request for a fuel cost
30 charge by any electric utility, the books and records pertaining
31 to the cost of fuel of all public, municipally owned, or
32 cooperatively owned utilities that generate electricity shall be
33 examined by the utility consumer counselor not less often than
34 quarterly, and the books and records of all electric
35 nongenerating public, municipally owned, or cooperatively
36 owned utilities shall be examined by the utility consumer
37 counselor not less often than annually. The utility consumer
38 counselor shall provide the commission with a report as to the
39 examination of said books and records within a reasonable time
40 following said examination. The utility consumer counselor
41 may, if appropriate, request of the commission a reduction or
42 elimination of the fuel cost charge. Upon such request, the
43 commission shall hold a hearing ~~forthwith~~ in the manner
44 provided in sections 58, 59, and 60 of this chapter.

45 (d) An electric generating utility may apply for a change in
46 its fuel charge not more often than each three (3) months. When

1 such application is filed the petitioning utility shall show to the
2 commission its cost of fuel to generate electricity and the cost
3 of fuel included in the cost of purchased electricity, for the
4 period between its last order from the commission approving
5 fuel costs in its basic rates and the latest month for which actual
6 fuel costs are available. The petitioning utility shall also
7 estimate its average fuel costs for the three (3) calendar months
8 subsequent to the expiration of the twenty (20) day period
9 allowed the commission in subsection (b). The commission
10 shall conduct a formal hearing solely on the fuel cost charge
11 requested in the petition subject to the notice requirements of
12 IC 8-1-1-8 and shall grant the electric utility the requested fuel
13 cost charge if it finds that:

14 (1) the electric utility has made every reasonable effort to
15 acquire fuel and generate or purchase power or both so as
16 to provide electricity to its retail customers at the lowest
17 fuel cost reasonably possible;

18 (2) the actual increases in fuel cost through the latest
19 month for which actual fuel costs are available since the
20 last order of the commission approving basic rates and
21 charges of the electric utility have not been offset by
22 actual decreases in other operating expenses;

23 (3) the fuel adjustment charge applied for will not result
24 in the electric utility earning a return in excess of the
25 return authorized by the commission in the last
26 proceeding in which the basic rates and charges of the
27 electric utility were approved. However, subject to section
28 42.3 of this chapter, if the fuel charge applied for will
29 result in the electric utility earning a return in excess of
30 the return authorized by the commission, in the last
31 proceeding in which basic rates and charges of the electric
32 utility were approved, the fuel charge applied for will be
33 reduced to the point where no such excess of return will
34 be earned; and

35 (4) the utility's estimate of its prospective average fuel
36 costs for each such three (3) calendar months are
37 reasonable after taking into consideration:

38 (A) the actual fuel costs experienced by the utility
39 during the latest three (3) calendar months for which
40 actual fuel costs are available; and

41 (B) the estimated fuel costs for the same latest three
42 (3) calendar months for which actual fuel costs are
43 available.

44 (e) Should the commission at any time determine that an

1 emergency exists that could result in an abnormal change in
2 fuel costs, it may, in order to protect the public from the adverse
3 effects of such change suspend the provisions of subsection (d)
4 as to the utility or utilities affected by such an emergency and
5 initiate such procedures as may be necessary to protect both the
6 public and the utility from harm. The commission shall lift the
7 suspension when it is satisfied the emergency no longer exists.

8 (f) Any change in the fuel cost charge granted by the
9 commission under the provisions of this section shall be
10 reflected in the rates charged by the utility in the same manner
11 as any other changes in rates granted by the commission in a
12 case approving the basic rates and charges of the utility.
13 However, the utility may file the change as a separate
14 amendment to its rate schedules with a reasonable reference
15 therein that such charge is applicable to all of its filed rate
16 schedules.

17 (g) No schedule of rates, tolls, and charges of a public,
18 municipally owned, or cooperatively owned gas utility that
19 includes or authorizes any changes in charges based upon gas
20 costs is effective without the approval of the commission except
21 those rates, tolls, and charges contained in schedules that
22 contain specific provisions for changes in gas costs or the cost
23 of gas that have previously been approved by the commission.
24 Gas costs or cost of gas may include the gas utility's costs for
25 gas purchased by it from pipeline suppliers, costs incurred for
26 leased gas storage and related transportation, costs for
27 supplemental and substitute gas supplies, costs incurred for
28 exploration and development of its own sources of gas supplies
29 and other expenses relating to gas costs as shall be approved by
30 the commission. Changes in a gas utility's rates, tolls, and
31 charges based upon changes in its gas costs shall be made in
32 accordance with the following provisions:

33 (1) Before the commission approves any changes in the
34 schedule of rates, tolls, and charges of a gas utility based
35 upon the cost of the gas, the utility consumer counselor
36 may examine the books and records of the public,
37 municipally owned, or cooperatively owned gas utility to
38 determine the cost of gas upon which the proposed
39 changes are based. In addition, before such an adjustment
40 to the gas cost charge becomes effective, the commission
41 shall hold a summary hearing on the sole issue of the gas
42 cost adjustment. The utility consumer counselor shall
43 conduct his a review and make a report to the commission
44 within thirty (30) days after the utility's request for the gas

1 cost adjustment is filed. The commission shall hold the
2 summary hearing and issue its order within thirty (30)
3 days after it receives the utility consumer counselor's
4 report. The provisions of this section and sections 39, 43,
5 54, 55, 56, 59, 60, and 61 of this chapter concerning the
6 filing, printing, and changing of rate schedules and the
7 time required for giving notice of hearing and requiring
8 publication of notice do not apply to such a gas cost
9 adjustment or such a summary hearing.

10 (2) Regardless of the pendency of any request for a gas
11 cost adjustment by any gas utility, the books and records
12 pertaining to cost of gas of all public, municipally owned,
13 or cooperatively owned gas utilities shall be examined by
14 the utility consumer counselor not less often than
15 annually. The utility consumer counselor shall provide the
16 commission with a report as to the examination of said
17 books and records within a reasonable time following said
18 examination. The utility consumer counselor may, if
19 appropriate, request of the commission a reduction or
20 elimination of the gas cost adjustment. Upon such
21 request, the commission shall hold a hearing ~~forthwith~~ in
22 the manner provided in sections 58, 59, and 60 of this
23 chapter.

24 (3) A gas utility may apply for a change in its gas cost
25 charge not more often than each three (3) months. When
26 such application is filed, the petitioning utility shall show
27 to the commission its cost of gas for the period between
28 its last order from the commission approving gas costs in
29 its basic rates and the latest month for which actual gas
30 costs are available. The petitioning utility shall also
31 estimate its average gas costs for a recovery period of not
32 less than the three (3) calendar months subsequent to the
33 expiration of the thirty (30) day period allowed the
34 commission in subdivision (1). The commission shall
35 conduct a summary hearing solely on the gas cost
36 adjustment requested in the petition subject to the notice
37 requirements of IC 8-1-1-8 and may grant the gas utility
38 the requested gas cost charge if it finds that:

39 (A) the gas utility has made every reasonable effort to
40 acquire long term gas supplies so as to provide gas to
41 its retail customers at the lowest gas cost reasonably
42 possible;

43 (B) the pipeline supplier or suppliers of the gas utility
44 has requested or has filed for a change in the costs of

gas pursuant to the jurisdiction and procedures of a duly constituted regulatory authority;

(C) the gas cost adjustment applied for will not result, in the case of a public utility, in its earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the public utility were approved; however, subject to section 42.3 of this chapter, if the gas cost adjustment applied for will result in the public utility earning a return in excess of the return authorized by the commission in the last proceeding in which basic rates and charges of the gas utility were approved, the gas cost adjustment applied for will be reduced to the point where no such excess of return will be earned; and

(D) the utility's estimate of its prospective average gas costs for each such future recovery period is reasonable and gives effect to:

(i) the actual gas costs experienced by the utility during the latest recovery period for which actual gas costs are available; and

(ii) the actual gas costs recovered by the adjustment of the same recovery period.

(4) Should the commission at any time determine that an emergency exists that could result in an abnormal change in gas costs, it may, in order to protect the public or the utility from the adverse effects of such change suspend the provisions of subdivision (3) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(5) Any change in the gas cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference therein that such charge is applicable to all of its filed rate schedules.

SECTION 2. IC 8-1-2-42.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS

FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 42.1. (a)
As used in this SECTION, "electric utility" means a public
utility (as defined in IC 8-1-2-1(a)) that:

(1) provides retail electric service to:

(A) more than four hundred thousand (400,000);

but

(B) less than five hundred thousand (500,000);

retail electric customers in Indiana on April 1, 2007;
and

(2) has a service area that includes, among other
counties, each of the counties described in
IC 36-7-7.6-1.

(b) As used in this section, "electric utility holding
company" means a corporation, company, partnership, or
limited liability company that owns an electric utility.

(c) An electric utility or an electric utility holding
company may not consummate any of the following
transactions unless the electric utility first petitions the
commission for a review of the electric utility's basic rates
and charges under section 42(a) of this chapter:

(1) A transaction described in section 83 or 84 of this
chapter.

(2) A merger, consolidation, reorganization, or union
involving the electric utility.

(3) A tender offer or contract for the purchase,
acquisition, assignment, or transfer of stock of the
electric utility.

(4) Any other transaction involving the sale or transfer
of any of the assets, liabilities, franchises, works, or
systems of the electric utility to another person or
entity, other than in an intracorporate transaction.

(d) In reviewing an electric utility's rates and charges
under this section, the commission shall follow the
procedures for ratemaking proceedings set forth in:

(1) IC 8-1-2; and

(2) any applicable rules adopted by the commission.

(e) In determining the basic rates and charges for the
electric utility in a proceeding conducted under this section,
the commission shall consider:

(1) the value of the electric utility's assets, facilities,
works, and systems;

(2) the electric utility's gross intrastate operating
revenue; and

(3) the electric utility's operating expenses;

1 as determined at the time of the ratemaking proceedings.
2 (f) After its review of the evidence presented in the
3 proceedings, the commission shall issue an order
4 determining the basic rates and charges for the electric
5 utility. The commission shall issue its order under this
6 subsection to take effect before the anticipated date of
7 completion of the transaction described in subsection (c) on
8 which the electric utility's petition is based."

9 Renumber all SECTIONS consecutively.
(Reference is to HB 1824 as reprinted March 30, 2007.)

Senator TALLIAN